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AUG 15 2013

DEPARTMENT OF
EDUCATION



Model Form to Assist Parent(s)/Guardian(s) in Filing a Complaint

A complaint process can be used when you believe a district or area education agency **violated a requirement** of Part B of the Individuals with Disabilities Education Act (IDEA). *The complaint process is not the avenue to use when you are having differences of opinion with educators, such as the type of reading program to use or the amount of support services you believe should be provided for a child.*

CHILD'S INFORMATION	Child's name: Please see attached. Address where child lives (for contact information): Name of District, School, and AEA where child <u>lives</u>: Name of District, School, and AEA where child <u>attends</u> if different from where the child lives:
PARENT(S) GUARDIAN INFORMATION	Parent(s) Guardian(s) name(s): Mailing address (or contact information): City: State: Zip: Phone/Contact number: E-mail (if available): Is there another parent/guardian at another address with parental rights? <input type="checkbox"/> Yes <input type="checkbox"/> No If <u>yes</u> , please the following: Parent(s) Guardian(s) name(s): City: State: Zip: Phone/Contact number: E-mail (if available):

Describe the following (use additional sheets of paper if more space is needed):

Please see attached correspondence.

1. The nature of the problem (including a statement that the public agency violated a requirement of the Individuals with Disabilities Education Act or the Iowa Special Education Rules):
2. The facts of this case relating to the above problem:
3. Your proposed resolution of the problem:

Did the alleged violation occur less than one year prior to the date that the complaint was received by the Department of Education? ☒ Yes ☐ No

Organization or person filing the complaint: Disability Rights Iowa

Address: 400 East Court Avenue, Suite 300

City: Des Moines State: Iowa Zip: 50309

If organization, contact person's name: Cynthia A. Miller, Senior Staff Attorney and Nathan Kirstein, Staff Attorney

Telephone number or other method of contact: 515-278-2502

Send a completed form to EACH of the following:

1. The district that made the decision with which you disagree.
2. The AEA special education director.
3. Director, Iowa Department of Education
Grimes State Office Building, Des Moines, Iowa 50319-0146

Word Document/Mac/SKW/6-15-09 / #2final

Disability Rights IOWA

Law Center for Protection and Advocacy™

August 15, 2013

Dr. Brad Buck, Director
Dr. Barb Guy, Consultant
Iowa Department of Education
Grimes State Office Building
Des Moines, IA 50319-0146

Mark Day, Acting Superintendent
Iowa Juvenile Home/Girls State Training School
701 South Church Street
Toledo, IA 52342

Mary Stevens, Special Education Director
AEA 267
909 South 12th Street
Marshalltown, IA 50158

This is a formal systemic complaint under 34 C.F.R. §300.151-153 and Iowa Administrative Code 281—41.151-153. Please see the following pages showing how the school district did not follow the law and the facts outlining how that occurred.

Complainant:

Cynthia A. Miller J.D.
Nathan Kirstein J.D.
Beth Rydberg, Advocate/Investigator
Disability Rights Iowa
400 East Court Avenue, Suite 300
Des Moines, IA 50309
Phone: 515-278-2502
Email: cmiller@driowa.org; nkirstein@driowa.org; brydberg@driowa.org

This systemic complaint is being filed on behalf of the children residing at the Iowa Juvenile Home/Girls State Training School.

Name of District, School and AEA:

Iowa Juvenile Home/Girls State Training School
701 South Church Street
Toledo, IA 52342

Herbert Hoover High School
701 South Church Street
Toledo, IA 52342

AEA 267
909 South 12th Street
Marshalltown, IA 50158

Executive Summary:

As the federally-funded protection and advocacy system for Iowans with disabilities, Disability Rights Iowa began monitoring the Iowa Juvenile Home in November 2012 for safety and compliance issues in accordance with our Board-approved priorities. During monthly monitoring visits, review of records, and interviews of students and staff, DRI found multiple violations under the IDEA including a denial of access to education, inadequate transition planning, and lack of knowledge of the rules of special education. This systemic complaint addresses these violations and asks for remedies including individual student evaluation, compensatory education, and staff training.

Background Information:

Disability Rights Iowa monitors facilities housing children with disabilities as part of its legal mandate. One role of a P&A is to ensure that children and youth with disabilities are receiving appropriate special education and supports, including children and youth in state care and those housed in state run facilities.

Iowa Juvenile Home/Girls State Training School (IJH) is a facility operated by the Iowa Department of Human Service (DHS). According to AEA 267, all employees of the facility, including the school, are DHS employees. AEA 267 has one social worker who works at the school half-time and one school psychologist who works at the school full-time. Half of the school psychologist's time is paid by DHS.

Children at the IJH have mental health diagnoses under the DSM 5 Axis I and II and many suffer from poly-trauma. Students average 8-9 out of home placements due to behaviors related to a disability or mental illness. They range in ages from 12 to 18.

In providing services to children with disabilities, IJH is obligated to identify, evaluate, and provide a Free Appropriate Public Education (FAPE) under IDEA 34 C.F.R. §300.101. SEA is ultimately responsible for IDEA implementation within the state of Iowa (281 IAC 41.149). During monthly monitoring visits beginning in November 2012, DRI has seen repeated patterns of IDEA violations in the facility.

Informal Resolution Attempts:

DRI has worked with IJH and AEA staff to correct some of these issues. DRI expressed concerns on January 15, 2013, to the Superintendent of IJH regarding FAPE for students who are not allowed to attend school for extended periods of time and the Superintendent responded that she will contact the AEA to discuss better ways to deliver special education services. In January 18, 2013, DRI sent the Assistant Attorney General citations of the federal and state special education laws that DRI believes are being violated at the IJH. The parties had a second meeting on February 14, 2013 at which DRI provided information on the federal and state special education laws governing disciplinary procedural safeguards and transition planning requirements. DRI also met with the Services Area Director of Special Education and the Special Education Coordinator of AEA 267 and their attorney on May 3, 2013 to review issues with transition plans at IJH. Despite these efforts, some issues continue and DRI is concerned about the educational loss experienced by students prior to changes made.

Facts of the case related to the problems:

Facts Related to the Denial of FAPE through Discipline

- November 14, 2012 – Disability Rights Iowa discovered (3) students living in isolation cells at the Iowa Juvenile Home / Girls State Training School (IJH). The cells are part of the Control Room which is defined in Iowa Administrative Code as “a locked room used for treatment purposes in a comprehensive residential facility.” (IAC 441-114.2)
 - Student #1 – Her treatment team determined that she would live in the control room beginning in January 2012 and was not allowed to attend school a majority of the time. Worksheets and homework were provided during the time she was not in school but no direct instruction was provided to enable the student to progress in the general education curriculum and in her IEP goals.
 - Student #2 – Her treatment team determined that she would live in the control room beginning on October 9, 2012 and was not allowed to attend school a majority of the time. Worksheets and homework were provided during the time she was not in school but no direct instruction was provided to enable the student to progress in the general education curriculum and in her IEP goals.
 - Student #3 – Her treatment team determined that she would live in the control room beginning on October 3, 2012 and was not allowed to attend school a portion of this time. Worksheets and homework were provided during the time she was not in school but no direct instruction was

provided to enable the student to progress in the general education curriculum and in her IEP goals.

- December 18, 2013 – Student's #1, #2, & #3 were released from the control room unit and allowed to live in the cottages. This was in response to a letter written by DRI regarding the use of seclusion rooms in violation of state law.
 - Student #1 – She was placed on a program that required her to earn school through a level program. The lowest level required her to spend her day in a control room with no school. The highest allowed a full day at school. (See attached excerpt from Student #1's Quarterly Case Review describing the level program).
 - Student #2 – She was reintroduced to school on a day-to-day basis.
 - Student #3 – She was further integrated into school on a day to day basis.
- January 15, 2013 – DRI visited the facility and in an interview with the Superintendent noted the following:
 - Student #2 was court ordered to another facility.
 - Removals from school to control rooms or cottages are not monitored to determine when a change of placement has occurred.
 - No manifestation determination reviews were held.
- March 2013 – Student #3 was court ordered to another facility.
- March 4, 2013 – DRI visits the IJH
 - Student #1 reports no longer being on a program where she has to earn school. During the time between December 18, 2012 and this date, worksheets and homework were provided during the time she was not in school but no direct instruction was provided to enable the student to progress in the general education curriculum and in her IEP goals.
 - The interim IJH superintendent reports that school will no longer be used as a reward and that federal and state special education laws will be followed by the IJH.
- July 2013 – DRI receives a spreadsheet of hours logged in the control room unit from August 2012 to December 2012. Several students on IEP's were confined in control rooms for lengthy, continuous amounts of time. Given the previously stated facts, DRI has good reason to believe these students were not receiving direct instruction to enable the students to progress in the general education curriculum and in their IEP goals.

Facts Related to legal violations related to the IEPs

- February 21, 2013 – DRI visited the IJH
 - The superintendent of the facility was notified that Student #1, who has an IEP, will be turning 18 within the next six months and has reported that she has not been a part of her transition planning process.

- Student #1 was not able to report to DRI anything about her transition plan.
- March 4, 2013 – DRI met with the principal of the school and Superintendent of IJH and were advised that all functional behavioral assessments and behavior intervention plans were updated for all students on IEPs.
- March 13, 2013 - DRI requested Student #1's most recent IEP. The IEP was received and DRI asserts that in particular the transition plan was inadequate. For example, the plan states she will attend community college but makes no plan for her to obtain her high school diploma before leaving the facility or after leaving the facility.
- April 3, 2013 – DRI reviewed a sampling of eight (8) FBAs and BIPs from student IEPs and noted:
 - Functions that do not match behaviors
 - BIPs that do not match behaviors
 - Updates were completed in a manner that mixed older, irrelevant information with newer information
- May 8, 2013 – DRI visited the IJH and reviewed transition plans on IEP's for Student's #4, #5, #6, and #7. The following issues were found:
 - Transition goals that do not match current reading or math goals and no additional supports added to meet these transition goals (i.e. [REDACTED] [REDACTED] [REDACTED])
 - Transition goals that do not account for supports/services needed to close the credit gap if the student will not graduate before turning 18
 - Transition goal that has a student receiving a [REDACTED] at a state university that does not offer a [REDACTED]
 - Incorrect dates (i.e. graduation dates that have already occurred but the student has not graduated)
 - Living skills listed for the student but when the student is interviewed she does not know how to do those skills
 - 21st Century Living skills course is the main source for all living, learning, and working skills teaching
 - No vocational or living skills provided through real life experience
- May 9, 2013 – DRI requested copies of IEP's for all youth living at IJH who have IEP's.
- May 21, 2013 – AEA 267 called a special IEP meeting for the purpose of transition planning for Student #1 and her IEP was amended to reflect an appropriate transition plan.
- May 29, 2013 – DRI received IEP's for thirty youth at the IJH who are age 14 and older.

- Some IEPs had not been updated from their previous placement
- Some IEPs had DHS listed as the parent or guardian for the purpose of educational decision making; no surrogate parent was listed
- Some IEPs did not have required team members, including parents or parent surrogate
- IEPs did not include or appeared to have limited related services and supports
- Twelve IEP's were blank, incomplete, or generic in areas on the IEP including the transition plan section
- Seven IEP's had transition goals that seemed unattainable considering the student's current academic levels/goals and no additional services were offered to meet these transition goals
- Six IEP's did not gather any other information regarding living, learning, and working except for student self-reporting
- All reported a majority of the living, learning, and working skills to be learned in the 21st Century Living Skills class
- June 18, 2013 – DRI visited IJH and interviewed the 21st Century Living Skills teacher.
 - All off-campus hands-on learning activities such as grocery shopping have not been allowed for over a year
 - On-campus hands-on learning activities are on a rewards level system based on cottage and school behaviors
- July 23, 2013 – DRI visited IJH and interviewed Student #1.
 - She reports that much of her transition plan services have not been followed (i.e. no visit to the [REDACTED], no online credit recovery training)

Nature of the Problem:

1. IEPs

IEPs were not written or revised upon admittance to IJH to reflect the current placement and therefore are not individually designed for the unique strengths and needs of each eligible student. As a result, students were denied FAPE. 34 C.F.R. §300.320, 34 C.F.R. §300.324; 281-41.324(1)-(2).

2. LRE

IJH policies demonstrate that special education services will match the model of service delivery available in the facility rather than the student's educational needs. This is a violation of the requirement to plan and deliver individualized services in the least restrictive environment. 34 C.F.R § 300.114(a); 34 C.F.R. §300.116.

The LEA must formulate an IEP before making a placement decision, as placement determinations must be based on a student's IEP. (34 C.F.R. §300.116(b)(2)). Developing the IEP begins with a comprehensive, individual evaluation. (34 C.F.R. § 300.324(a)(1)(iii)). As one court has noted, the evaluation provides the foundation for the IEP. If the evaluation is incomplete, the IEP cannot be appropriate. (*East Penn School District v. Scott B.*, 29 IDELR 1058 (E.D.Pa. 1999), *aff'd*, 213 F.3d 628 (3rd Cir. 2000)). There is a lack of evaluations completed upon admission at IJH for proper IEP development and related services and supports.

3. Lack of transition planning

- a. IEPs reviewed demonstrated a lack of transition planning in goals and activities in the IEP. IJH is required to develop a statement of transition in IEPs for the children at age 14. The transition goals or services are to provide for measureable post-secondary goals related to training, education, employment or independent living skills. 20 U.S.C. § 1414(d)(1)(A)(VIII); 34 C.F.R. § 300.320(b); 281-IAC 41.320(2).
- b. IEPs reviewed demonstrated a failure to provide transition goals and services related to training and education. Transition services must be based on an individual child's needs, taking into account the child's strengths, preferences and interests. Transition services must be designed using a results-oriented process that is focused on improving the academic and functional achievement of the child to facilitate movement from school to post-school activities. Transition services include instruction, related services, community experiences, and other activities. 34 C.F.R. §300.43.

Transition goals and services are designed to be results-oriented; mere inclusion of language is not enough. See 72 Fed. Reg. 46668 (8/14/06).

4. Failure to engage in Child Find Activities

IJH has an affirmative obligation to locate, identify and evaluate all children with disabilities consistent with 34 C.F.R. §300.111(a).

IJH has failed to evaluate students for IDEA eligibility when behavioral evidence of their potential eligibility exists. Examples include having high numbers of disciplinary removals to quiet room and/or isolation cells.

5. Parent/guardian/parent surrogate participation in IEPs

Some IEPs reviewed at IJH revealed that DHS case managers were attending IEPs as a representative of the guardian instead of a surrogate parent in violation of IDEA for students who are wards of the State. Parent surrogates cannot be employees of a state agency. 20 U.S.C. § 1415 (b)(2); 34 C.F.R. § 300.519

IJH policy on educational and individual education plan (policy 6.08) states the IEP team will consist of an AEA representative, consulting teacher or special

education, education advisor, and principal or designee. The policy then states "it would be beneficial to have the parents of the student, cottage counselor, and social worker in attendance." This violates the cardinal rule of IDEA of parent involvement. 34 C.F.R. §300.321-300.322; 34 C.F.R. §300.327

6. Lack of related services in IEP

Eligible students with disabilities are entitled to related services designed to ensure that they benefit from their educational program. The need for related services must be considered by the IEP team, and goals and objectives related to the need for related services must be incorporated into the IEP. 34 C.F.R. §300.17; 34 C.F.R. §300.34. A review of the IEPs indicates that some students did not receive needed services.

7. Failure to educate students when they are placed in disciplinary or administrative segregation

Students at IJH experienced a nearly complete cessation of education when placed in isolation in the Support Unit. Students received no direct instruction in order to enable the students to progress in the general education curriculum and toward their IEP goals. Some students placed in isolation were removed from the school for more than 10 consecutive days but the removals were not documented as "suspensions." Implementation of the IEPs in the disciplinary setting was not provided.

On a case-by-case determination, school personnel may determine whether to remove a student who violates a code of conduct to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days. 34 C.F.R. §300.530(a)-(b). If the disciplinary change in placement exceeded 10 consecutive school days, and the behavior of the student was not considered to be a manifestation of the disability, the student was still entitled to receive the educational services as outlined in the IEP and also receive a functional behavioral assessment and behavioral intervention services designed to address the behavior so that it does not recur. 34 C.F.R. §300.530(c)-(d).

Changes in placement should have been reviewed within 10 school days by the IEP team for a manifestation determination. 34 C.F.R. §300.530(e)-(f). If the behavior was a manifestation of the disability, IJH should have conducted or modified the functional behavioral assessment and behavioral intervention plan. 34 C.F.R. §300.530(f).

8. Lack of behavior support plans

In the case of a student whose behavior impedes the student's learning or that of others, the IEP team is required to consider the use of positive behavioral interventions and supports and other strategies when developing the student's IEP. 34 C.F.R. §300.324(a)(2)(i).

Proposed Corrective Action:

1. For the SEA to conduct an independent review of all students residing at IJH for more than 30 days over the previous year who were eligible for transition planning. This review shall evaluate these cases for educational loss and order appropriate compensatory education in all cases in which violations of the IDEA and Iowa's special education regulations are found.
2. Revise IJH policies and procedures to ensure appropriate transition planning.
3. Develop programs that provide real life work experiences in the community for students.
4. SEA to immediately reconvene IEP teams of all current students of IJH to ensure compliance with IDEA and Section 504 requirements. SEA staff to attend such meetings and IEP to consider compensatory education in all cases in which violations of IDEA and Iowa special education regulations are found.
5. Require collaboration between the students' IEP teams and DHS case workers who are developing transition plans.
6. Conduct training for all IJH staff on IDEA standards and obligations, and provide additional specific training(s) to all IJH school staff on any topic deemed appropriate by the Department. Written proof of attendance at such training(s) will be provided to DRI within 30 days of completion of the training(s).
7. Review and revise policies and procedures to ensure Child Find, evaluations, IEPs, FAPE, discipline and appointment of surrogate parents.
8. Iowa Department of Education to monitor quarterly for three years and report to DRI.
9. Ensure adequate number of trained personnel to meet IDEA obligations.

Sincerely,

DISABILITY RIGHTS IOWA


Cynthia A. Miller
Senior Staff Attorney

Enc.: Quarterly case review exhibit